IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6316 of 2000

with

SPECIAL CIVIL APPLICATION No 9603 of 2000

and

SPECIAL CIVIL APPLICATION No 11709 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GSRTC

Versus

MAHMEDBHAI FAROOKBHAI DABAVALA

Appearance:

MR HARDIK C RAWAL for Petitioner

Party-in-person respondent

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 01/10/2004

ORAL JUDGEMENT

These three Special Civil Applications have been filed by the Gujarat State Road Transport Corporation challenging the separate orders passed by the Labour Court, Amreli in separate recovery applications filed by the respondent herein. The respective applications pertained to different periods of alleged non-payment of salary to the respondent workman.

2. The respondent-workman was initially dismissed from service. However, subsequently the order of dismissal was withdrawn by the employer and the order of dismissal dated 21.10.87 was sought to be substituted by an order of penalty of placing the respondent in the minimum of scale of Conductor with effect from 21.10.87 till his retirement.

3. The respondent had thereupon challenged the fresh order of substituted penalty dated 30th January 1997 before the Industrial Tribunal and by the award dated 23.7.2003, the Industrial Tribunal was pleased to allow the reference of the respondent and quashed the order of penalty dated 30th January 1997.

4. In a separate order passed by this Court in Special Civil Application No.3125 of 2004, the order of the Industrial Tribunal is partly set aside. The order of penalty dated 30th January 1997 though upheld, the retrospective operation of the said order is set aside. By virtue of this change in the circumstance, the basis for recovery application has undergone a material change. Therefore, though the respondent is entitled to receive certain payments not made by the petitioner, the orders of the Labour Court passed in the recovery applications cannot be upheld in its entirety.

5. In these proceedings, it would not be possible to examine the exact effect of the order passed by this Court in Special Civil Application No.3125 of 2004. Suffice to note that the respondent would be entitled to certain differential salary on account of the modification in the order of penalty dated 30th January 1997 passed by the petitioner. It is, therefore, directed that the petitioner shall calculate the monetary benefits payable to the respondent on the basis of the order passed by this Court in Special Civil Application No.3125 of 2004 and the same shall be paid to the respondent within a period of ten weeks from today. It

is expected that the petitioner shall not drive the respondent to file yet another recovery application. However, if there is any genuine dispute about the exact calculation of the entitlement of the respondent, it will be open for the respondent to approach the Labour Court with an appropriate recovery application.

6. Subject to the above observations, the orders dated 9.3.2000, 22.5.2000 and 23.11.2001 passed in Recovery Application Nos.371/98, 398/98 and 64/2000 respectively by the Labour Court, Amreli are quashed and set aside. The petition are allowed to the above extent. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)
(vjn)